

SENSITIVE

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FEDERAL ELECTION COMMISSION

**FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT**

2017 FEB -3 AM 10: 43

MUR: 7094
DATE COMPLAINT FILED: June 30, 2016
DATE OF NOTIFICATION: July 8, 2016
RESPONSE RECEIVED: September 23, 2016
DATE ACTIVATED: September 29, 2016

EXPIRATION OF SOL: June 1, 2021
ELECTION CYCLE: 2016

COMPLAINANTS:

Campaign Legal Center
J. Gerald Herbert
Democracy 21
Paul S. Ryan
Fred Wertheimer

RESPONDENTS:

Donald J. Trump for President, Inc. and Timothy
Jost in his official capacity as treasurer
Donald J. Trump

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30121(a)(2)
11 C.F.R. § 110.20(g)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

MUR: 7096
DATE COMPLAINT FILED: July 6, 2016
DATE OF NOTIFICATION: July 12, 2016
RESPONSE RECEIVED: September 23, 2016
DATE ACTIVATED: September 29, 2016

EXPIRATION OF SOL: June 1, 2021
ELECTION CYCLE: 2016

COMPLAINANT:

Michael Glenn Bradley

RESPONDENTS:

Donald J. Trump for President, Inc. and Timothy
Jost in his official capacity as treasurer
Donald J. Trump

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30121(a)(2)
11 C.F.R. § 110.20(g)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

2017 FEB -3 AM 10: 43
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FEDERAL ELECTION COMMISSION

MUR: 7098
DATE COMPLAINT FILED: July 6, 2016
DATE OF NOTIFICATION: July 12, 2016
RESPONSE RECEIVED: September 23, 2016
DATE ACTIVATED: September 29, 2016

EXPIRATION OF SOL: June 1, 2021
ELECTION CYCLE: 2016

COMPLAINANT: American Democracy Legal Fund
RESPONDENTS: Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer
Donald J. Trump
RELEVANT STATUTE AND REGULATION: 52 U.S.C. § 30121(a)(2)
11 C.F.R. § 110.20(g)
INTERNAL REPORTS CHECKED: None
FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaints in these matters allege that President Donald J. Trump ("Trump") and Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer ("the Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by knowingly soliciting contributions from foreign nationals during the 2016 presidential election. The allegations in the Complaints involve e-mails apparently sent by the Committee to members of foreign parliaments in June and July 2016. Based on the available information, we recommend that the Commission find reason to believe that the Committee violated the Act's ban on soliciting contributions from foreign nationals and enter into probable cause conciliation with the Committee, and find no reason to believe that Trump violated the Act.

II. FACTUAL BACKGROUND

Beginning on June 22, 2016, a number of press entities reported that members of foreign parliaments received soliciting contributions for the Trump Committee. In Iceland “numerous” Icelandic members of parliament reportedly received e-mails asking recipients to “DONATE NOW” and pledging that President Trump would personally match donations made within 48 hours.¹ In Scotland it was reported that all 54 Scottish National Party members of the U.K. Parliament received four e-mails apiece from the Trump campaign requesting that recipients “please chip in today,” “donate right now,” or “[h]elp make history by giving one of the amounts below.”² It was also reported that British members similarly received e-mail solicitations, leading one U.K. Parliament member to state that “Members of Parliament are being bombarded by electronic communications” and appeal to the Speaker of the Commons to help to block the e-mails.³ In Australia at least one member of Parliament acknowledged receiving four solicitation e-mails from Trump’s campaign in a week asking for a “generous contribution,” and believed that there were other members who received such e-mails.⁴ All of the e-mail addresses for the members of parliament appear to have been sent to their official government e-mail addresses, which were readily available online.

Based on this information, the Complaints allege that the Committee and Trump violated the Act by knowingly soliciting contributions from foreign nationals. They argue that because the e-mail addresses of the foreign national recipients contained clearly foreign domain

¹ Compl. at 3 (MUR 7094).

² Compl. at 2 (MUR 7098); Compl. at 3 (MUR 7094).

³ Compl. at 4 (MUR 7094); Compl. at 3 (MUR 7098).

⁴ Compl. at 5 (MUR 7094); Supp. Compl. at 3 (MUR 7098).

1 extensions,⁵ the Committee was aware of facts that would lead a reasonable person to conclude
2 there was a substantial probability that the recipients of the e-mails were foreign nationals.⁶ The
3 Complaint in MUR 7094 also specifically argues that the Committee continued to send
4 prohibited solicitation e-mails after the media began covering the story on or about June 22,
5 2016, and that media coverage should have alerted the Committee to the prohibited nature of the
6 solicitations.⁷ A Supplemental Complaint filed in MUR 7098 alleges that the Committee
7 continued to send solicitation e-mails to foreign nationals as late as July 12, 2016. Based on the
8 above information, the Complaints allege that the Committee violated the Act.⁸

9 In a joint Response, Trump and the Committee do not deny that the Committee sent e-
10 mail solicitations to foreign nationals, but instead argue that the Committee had no knowledge
11 that it was sending such e-mails.⁹ The Committee asserts that the list it used to send the
12 solicitations contains over 3,000,000 e-mail addresses, and that it could not have known, and
13 should not be expected to know, that a small portion ("a few hundred-thousandths of one
14 percent") belonged to foreign nationals.¹⁰ Moreover, the Committee states that it did not

⁵ The Complaint in MUR 7094 specifically alleges the Committee sent solicitations to e-mail addresses including the domain extensions @parliament.uk (Parliament of the United Kingdom), @althingi.is (Parliament of Iceland), and @aph.gov.au (Parliament of Australia). Based on media reports cited in the Complaints and other publicly available information, it appears that other parliaments whose members allegedly received solicitation e-mails have domain extensions that include @ft.dk (Parliament of Denmark), @parliament.fi (Parliament of Finland), and @parliament.scot (Parliament of Scotland).

⁶ Compl. at 5 (MUR 7098); Compl. at 8 (MUR 7094).

⁷ Compl. at 8-9 (MUR 7094).

⁸ The Complaints are based entirely on the actions of the Committee and do not contain any specific allegations as to Trump's role in sending the solicitations.

⁹ Because the three Complaints allege the same violation based on the same set of facts, the Committee submitted a joint Response to the Complaints. See Resp. at 1 n.1 (Sept. 23, 2016).

¹⁰ *Id.* at 2, 5-6. "[I]t is simply not feasible to conduct a record-by-record review of a multi-million entry e-mail list in order to monitor individual records...." *Id.* at 6.

1 proactively add foreign e-mail addresses to its list, but instead the list is "mainly" made up of e-
2 mail addresses of individuals who "submit contact information on the Committee website."¹¹

3 Additionally, the Committee argues that because e-mail addresses are portable, unlike
4 physical addresses, it cannot be sure whether they belong to foreign nationals even if they
5 contain foreign domain extensions.¹² The Committee contends that in the past, the Commission
6 has determined that foreign physical addresses were not *prima facie* evidence that the contributor
7 was a foreign national, and argues that foreign domain extensions should not be held to a higher
8 standard.¹³

9 Finally, the Committee argues that Commission regulations contemplate the "inadvertent
10 receipt of impermissible contributions so long as those are identified and refunded...."¹⁴ The
11 Committee asserts that it has in place the same safeguards the Commission approved in the
12 Obama for America matters (MURs 6078/6090/6108/6139/6142/6214) that ensure it does not
13 receive prohibited contributions.¹⁵ Based on the above factors, the Committee argues that the
14 Complaints should be dismissed.

¹¹ *Id.* at 1-2.

¹² *Id.* at 1-2. The Committee cites extensions such as ".tv," the national extension of Tuvalu, which "is used widely in the U.S. because of its fortuitous abbreviation." *Id.* at 6.

¹³ *Id.* at 7 (citing Factual & Legal Analysis at 13, MURs 6078/6090/6108/6139/6142/6214 (Obama for America)). As discussed below, a foreign physical address is part of a non-exhaustive list of "pertinent facts" the Commission has indicated "would lead a reasonable person to conclude that there is a substantial probability that the source of the funds ... is a foreign national." 11 C.F.R. § 110.20(a)(4)-(5).

¹⁴ Resp. at 8.

¹⁵ *Id.* at 9-10. The Committee does not expand on what specific safeguards are in place other than to note a statement on the Committee's website that contributions from foreign nationals are prohibited, a notice that "By clicking 'Donate,' I certify that ... I am a U.S. Citizen or lawfully admitted permanent resident," requiring all contributors to enter a United States address and rejecting any non-U.S. addresses, and rejecting any contribution made in foreign currencies. The Committee also states that if a contribution is received with a foreign address, "the Committee sends a request for a copy of a valid U.S. passport and rejects contributions from contributors whose status cannot be confirmed with a passport." *Id.*

1 **III. LEGAL ANALYSIS**

2 The Act and Commission regulations prohibit individuals from knowingly soliciting,
3 accepting, or receiving a contribution from a foreign national.¹⁶ A "foreign national" is an
4 individual who is not a citizen of the United States or a national of the United States and who is
5 not lawfully admitted for permanent residence.¹⁷ Solicitation means "to ask, request, or
6 recommend, explicitly or implicitly, that another person make a contribution."¹⁸ "Knowingly" is
7 defined as having actual knowledge the solicited individual is a foreign national, being aware of
8 facts that would lead a reasonable person to conclude that there is substantial probability that the
9 solicited individual is a foreign national, or being aware of facts that would lead a reasonable
10 person to inquire whether the solicited individual is a foreign national.¹⁹

11 The Commission has previously concluded that there is an obligation on the part of the
12 individual engaged in solicitations to inquire into the citizenship of the target of the solicitations
13 prior to making the solicitations when they know or should have known that the solicitation is
14 being made to a foreign national.²⁰ Commission regulations include a non-exhaustive list of
15 "pertinent facts" that would lead a reasonable person to inquire further as to the citizenship status
16 of a solicited person, including that the potential donor provides a physical foreign address or

¹⁶ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

¹⁷ 52 U.S.C. § 30121(b).

¹⁸ 11 C.F.R. § 300.2(m). "Solicit has the same meaning as in 11 CFR 300.2(m)." *Id.* § 110.20(a)(6). The Committee does not dispute that the e-mails constitute solicitations under the regulations.

¹⁹ *Id.* § 110.20(a)(4); *Contribution Limitations and Prohibitions*, 67 FED. REG. 69,928, 69,941 (Nov. 19, 2002) ("This third standard ... is applicable to situations in which a known fact should have prompted a reasonable inquiry, but did not.").

²⁰ See, e.g., Advisory Op. 2016-10 (Parker); see also 67 FED. REG. at 69,941.

1 resides abroad.²¹ The regulations provide a safe harbor, "whereby a person is deemed to have
2 conducted a reasonable inquiry if she seeks and obtains copies of current and valid U.S.
3 'passport papers' for the solicited person, as long as the person conducting the inquiry does not
4 have actual knowledge that the solicited person is a foreign national."²²

5 In this matter, the available information shows that the Committee's e-mail distribution
6 list contained addresses that would lead a reasonable person to conclude that there is a
7 substantial probability that the individual is a foreign national, or at the very least would lead
8 them to inquire whether certain solicited individuals were foreign nationals. Specifically, the e-
9 mail addresses in question here are clearly connected to the national legislative bodies of those
10 countries, including terms such as "parliament" and "gov."²³ Given the improbability of a U.S.
11 citizen holding an e-mail address with the official governmental domain extension of a foreign
12 parliament, the Committee should have at least inquired as to the citizenship status of the holders
13 of the addressed prior to making a solicitation. Though Respondents argue that it was not
14 obvious based only on the e-mail addresses that the recipients were foreign nationals, that
15 argument is particularly unpersuasive where the e-mail addresses do not merely have a non-U.S.
16 extension, but official foreign government extensions.

17 The available information does not suggest that the Committee made any inquiries into
18 whether the solicitations were directed at foreign nationals despite evidence in the form of
19 foreign governmental e-mail addresses indicating that such inquiries were necessary. The
20 Committee does not argue that it made any attempts to ascertain the citizenship status of the
21 individuals it was soliciting with foreign e-mail addresses, instead insisting that it could not have

²¹ 11 C.F.R. § 110.20(a)(5).

²² AO 2016-10 at 3 (citing 11 C.F.R. § 110.20(a)(7)).

²³ *Supra* note 5.

1 possessed the requisite mental state under the Act and regulations based on the portability of e-
2 mail addresses and the large nature of its e-mail list. Despite the Committee's argument that its
3 list was too large to comply with the solicitation restrictions, the Act does not provide any safe
4 harbor based on the size of the solicitation.

5 As to the feasibility of ascertaining the contents of its own list, it is unclear from the
6 Response what, if any, steps the Committee took to prevent it from sending solicitation e-mails
7 to prohibited recipients. The Committee's argument that it could not be expected to vet
8 solicitations sent to 3 million e-mail addresses suggests that the Committee did not take steps to
9 confirm that solicitations were appropriately targeted at individuals who were permitted to
10 contribute under the Act.

11 Even if the Committee could argue that it did not know about the initial solicitations to
12 foreign nationals, by June 22, 2016, media reports about the Committee's solicitations to foreign
13 parliaments should have alerted the Committee that its e-mail list contained foreign nationals.
14 The Complaints raise questions about whether the Committee continued to send solicitation e-
15 mails after that point, which would constitute willful blindness and satisfy the "knowingly"
16 requirement of the foreign solicitation ban. There is no information from the Committee's
17 Response to suggest that it has taken any corrective action since the media reports or since the
18 initial complaint was filed to ensure that it does not solicit foreign nationals in the future. There
19 is also no information to suggest that the Committee complied with the safe harbor provisions for
20 its solicitations by requesting "passport papers" for the individuals it solicited as discussed in the
21 Parker Advisory Opinion,²⁴ as opposed to requesting documentation just from contributors to the
22 Committee.

²⁴ *Supra* note 20.

1 The alleged violations in the current matters are unlike those in the Obama for America
2 matter on which the Committee attempts to rely.²⁵ The Complaint in MUR 6772 alleged, among
3 other things, that the Obama committee solicited donations from foreign nationals and lacked
4 adequate safeguards to prevent it from receiving foreign contributions.²⁶ The Commission
5 determined, however, that the Obama committee had in place preventative mechanisms that had
6 been approved in past matters, and in any event, the speculative nature of the foreign
7 solicitations "[did] not support a reasonable inference of such violations."²⁷ Here, the
8 solicitations are not speculative; the Committee does not dispute that it sent solicitation e-mails
9 to foreign nationals. Based on the improbability that the holders of foreign parliament e-mail
10 addresses would be U.S. citizens and other information available to the Committee, the
11 Commission can reasonably infer, unlike in the Obama matter, that the Committee knowingly
12 violated the Act.

²⁵ MUR 6772 (Obama for America).

²⁶ Factual & Legal Analysis at 4, MUR 6772 (Obama for America).

²⁷ *Id.* at 8; *id.* at 8 n.6 ("Although the Complaint alleges solicitation violations, it provides no basis to conclude that the Obama Campaign Committees or any agent of those committees solicited foreign national contributions. The mere appearance of the [Obama domain name] on websites or blogs that are allegedly frequented by foreign nationals does not support a reasonable inference of such violations.").

V. RECOMMENDATIONS

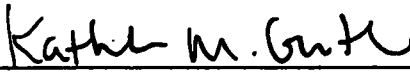
1. Find reason to believe that Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g);
2. Find no reason to believe that Donald J. Trump violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g);
3. Close the file as to Donald J. Trump;
4. Approve the attached Factual and Legal Analyses;
5. Enter into conciliation with Donald J. Trump for President Inc. and Timothy Jost in his official capacity for treasurer prior to a finding of probable cause to believe;
6. Approve the attached Conciliation Agreement; and

7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Date

2-3-17


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